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Attorneys for Defendant
Gateway Stone Associates, LLC

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

In re:

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
Debtor.

CASE NOS: BK-5-06-10726 LBR
CASE NOS: BK-5-06-10727 LBR
CASE NOS. BK-5-06-10728 LBR
CASE NOS. BK-5-06-10729 LBR
CHAPTER 11
JOINTLY ADMINISTERED
UNDER
CASE NO. BK-5-06-10725-LBR

**ANSWER TO COMPLAINT
SEEKING INJUNCTIVE
RELIEF AGAINST NON-
BANKRUPTCY LITIGATION
AND FOR DECLARATORY
RELIEF**

1 In re:

2 USA SECURITIES, LLC,
3 Debtor.

4 Affects:

- 5 ☐ All Debtors
6 ☒ USA Commercial Mortgage Co.
7 ☐ USA Securities, LLC
8 ☐ USA Capital Realty Advisors, LLC
9 ☐ USA Capital Diversified Trust Deed
10 ☐ USA First Trust Deed Fund, LLC

11 USA COMMERCIAL MORTGAGE COMPANY

12 Plaintiff,

13 vs.

14 GATEWAY STONE ASSOCIATES, LLC, a Delaware
15 limited liability company,

16 Defendant.

17 Comes Now, Defendant, Gateway Stone Associates, LLC (“This Answering
18 Defendant”), by and through its counsel, the Law Offices of Daniel D. White and Stephens,
19 Gourley & Bywater, and hereby answers the Complaint of Plaintiff USA Commercial Mortgage
20 Company (“USACM”) as follows:

- 21
- 22 1. As to paragraphs 1, 2, 3, 4, 5, 6, 9, 12, 15, 16, 17, 18, 20 and 21 of the Complaint, this
23 Answering Defendant admits the allegations as contained therein.
- 24 2. As to paragraphs 7, 10, 11, 22, 23 and 25 of the Complaint, this Answering Defendant is
25 without sufficient knowledge and/or information as to form a belief as to the truth and/or
26 falsity of the allegations contained therein, and therefore denies the same.
27
28

- 1 3. As to paragraph 8 of the Complaint, this Answering Defendant denies that the Loan
2 Agreement and Deed of Trust are dated November 10, 2005, denies the allegation that the
3 Promissory Note Secured By Deed of Trust is in favor of the Direct Lenders in the sum
4 of \$17,750,000.00, but admits the remaining allegations as contained therein.
5
- 6 4. As to paragraph 13 of the Complaint, this Answering Defendant admits the allegations
7 contained therein, but denies that these alleged sections of the Loan Agreement are
8 enforceable.
9
- 10 5. As to paragraph 14 of the Complaint, this Answering Defendant admits the allegations
11 contained therein, but denies that these alleged sections of the Loan Agreement are
12 enforceable.
13
- 14 6. As to paragraph 19 of the Complaint, this Answering Defendant admits that USACM has
15 not advanced any additional funds, but is without sufficient knowledge and/or
16 information as to form a belief as to the truth and/or falsity of the remaining allegations
17 contained therein, and therefore denies all of the remaining allegations.
18
- 19 7. As to paragraphs 24 and 26 of the Complaint, this Answering Defendant denies all of the
20 allegations as contained therein.
21
- 22 8. As to paragraph 27 of the Complaint, this Answering Defendant repeats all of its answers
23 to the allegations as contained in paragraphs 1 through 26 of the Complaint, as though
24 fully set forth herein.
25
- 26 9. As to paragraphs 28 and 29 of the Complaint, this Answering Defendant admits the
27 allegations as contained therein.
28
10. As to paragraphs 30, 31, 33, 34 and 35 of the Complaint, this Answering Defendant
denies all of the allegations as contained therein.

1 11. As to paragraph 32 of the Complaint, this Answering Defendant is without sufficient
2 knowledge and/or information as to form a belief as to the truth and/or falsity of the
3 allegations contained therein, and therefore denies the same.
4

5 12. As to paragraph 36 of the Complaint, this Answering Defendant repeats all of its answers
6 to the allegations as contained in paragraphs 1 through 36 of the Complaint, as though
7 fully set forth herein.

8 13. As to paragraph 37 of the Complaint, this Answering Defendant admits the allegations as
9 contained therein.
10

11 14. As to paragraph 38 of the Complaint, this Answering Defendant denies all of the
12 allegations as contained therein.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State a Cause of Action)**

16 This Answering Defendant alleges that each and every purported cause of action fails to state
17 facts sufficient to constitute any cause of action against this Answering Defendant.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Failure to Mitigate Damages)**

20 This Answering Defendant alleges that the Plaintiff has failed, neglected and refused to
21 mitigate its alleged damages.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Assumption of Risk)**

24 This Answering Defendant alleges that the Plaintiff failed to exercise ordinary care, action or
25 prudence to avoid the incidents alleged, or to care for its own property and assumed the risk of
26 the resulting damages to the Plaintiff, if any.
27
28

FOURTH AFFIRMATIVE DEFENSE

(Plaintiff's Breach of Contract)

This Answering Defendant is informed and believes, and on such information and belief alleges, that the Plaintiff breached the contract, if any, with this Answering Defendant and that by reason of said breach of contract, this Answering Defendant has been excused of any duties to perform the obligations as set forth in said contract.

FIFTH AFFIRMATIVE DEFENSE

(Offset)

This Answering Defendant alleges that it has suffered damages by reason of the Plaintiff's conduct and therefore has the right to offset any amount of money owed to or due to the Plaintiff by way of damage.

SIXTH AFFIRMATIVE DEFENSE

(Fraud)

This Answering Defendant alleges that the Plaintiff is barred from any recovery against this Answering Defendant by its own fraudulent conduct.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

This Answering Defendant alleges that the Plaintiff's conduct and relationship relative to this Answering Defendant was such as to bring the Plaintiff into this lawsuit with unclean hands, and as such the Plaintiff is estopped from pursuing these claims.

EIGHTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

This Answering Defendant alleges that any and all injuries, if any, sustained or suffered by the Plaintiff were proximately and substantially caused and contributed to by the negligence of the Plaintiff.

WHEREFORE, this Answering Defendant prays for judgment against the Plaintiff as follows:

1. That the Plaintiff take nothing by way of its Complaint;
2. That this Answering Defendant be awarded costs of suit incurred herein; and
3. For such other and further relief as this Court deems just and proper.

/s/ Daniel D. White, Esq.
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